

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**AQEEL TAJ**

Claimant

VS.

**SAFEWAY PET FOOD PLANT**

Respondent

AND

**ZURICH U S INSURANCE CO.**

Insurance Carrier

Docket No. 251,238

**ORDER**

Respondent requests review of a preliminary hearing Order For Medical Treatment entered by Administrative Law Judge Brad E. Avery on January 17, 2002.

**ISSUE**

The sole issue raised on review by the respondent is whether the Administrative Law Judge exceeded his jurisdiction in authorizing medical treatment with Glenn M. Amundson, M.D. Respondent contends claimant's notice of intent letter for the preliminary hearing did not request a change of treating physician. Accordingly, respondent argues the Administrative Law Judge did not have jurisdiction to order medical treatment.

Conversely, claimant notes the Board's jurisdiction to review preliminary hearing orders is limited and argues an order granting medical treatment is not reviewable. Claimant further argues that the issue of the specificity of the notice of intent was not raised before the Administrative Law Judge and cannot be raised for the first time on appeal.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

At the preliminary hearing held January 11, 2002, the Administrative Law Judge noted claimant was seeking additional evaluation and potential treatment from Dr. Amundson. The Judge further noted respondent's position was claimant had reached maximum medical improvement and was not in need of additional medical care.

Respondent now argues the claimant's notice of intent letter did not request a change of physician. The Workers Compensation Act provides that parties requesting preliminary hearings must give written notice to the other parties at least seven days before filing their application for a preliminary hearing. Further, that notice must contain a specific statement of the benefits being sought.<sup>1</sup>

A review of the preliminary hearing transcript fails to find this issue presented to the Administrative Law Judge. The Board's jurisdiction and authority is limited by statute. The legislature has specifically limited the Board's review to those legal and factual questions that were presented to the Administrative Law Judge.<sup>2</sup>

The rationale behind that limitation is the parties should have an opportunity to present evidence to the Division on the issues raised, which they cannot do before the Board. To hold otherwise would place the Board in the position of attempting to decide an issue based upon an incomplete record and would deny claimant the benefit of evidence that may have been presented if he had been aware that there was a dispute as to such issue at preliminary hearing. See Scammahorn v. Gibraltar Savings & Loan Assn., 197 Kan. 410, 416 P.2d 771 (1966).

For the above reasons, the Board finds the respondent's appeal in this matter is not one over which the Board will take jurisdiction from a preliminary hearing, and the respondent's appeal should be dismissed.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Board that the Order For Medical Treatment of Administrative Law Judge Brad E. Avery dated July 17, 2002, remains in full force and effect, and the appeal of the respondent in the above matter should be, and is hereby, dismissed.

**IT IS SO ORDERED.**

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<sup>1</sup>K.S.A. 44-534a(a)(1).

<sup>2</sup>K.S.A.44-555c(a).

Dated this \_\_\_\_\_ day of March 2002.

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BOARD MEMBER

c:     Ronald J. Laskowski, Attorney for Claimant  
       Eric T. Lanham, Attorney for Respondent  
       Brad E. Avery, Administrative Law Judge  
       Philip S. Harness, Workers Compensation Director